



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 6728-99
2 December 1999

SSC [REDACTED] SMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 27 October 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

6728-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
OCT 27 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
STAFF SERGEANT [REDACTED], USMC

Ref: (a) SSgt. [REDACTED] DD Form 149 of 19 Jul 99
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 21 October 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980101 to 980930 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is unjust and bases his argument on the fact that his Reporting Senior required that he take a physical fitness test (PFT) when, in fact, it was not required due to medical status. To support his appeal, the petitioner provides several items of documentation.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. When the petitioner acknowledged the adverse nature of the report (evidence his signature in Item 24), he consciously opted to omit any statement in his own behalf. In so doing, he passively concurred in the accuracy of the evaluation without providing anything in extenuation and mitigation of the recorded information. Had he objected to the fairness or accuracy of the report, it was then that he should have surfaced the concerns he now raises in reference (a). To do so a year after the fact lacks a certain amount of timeliness and credibility.

b. The petitioner was issued a light duty chit on 15 June 1998 for a duration of 30 days. That document specified limited PFT status of no running. Now, in retrospect, the medical officer who signed the 15 June 1998 light duty chit has furnished a statement indicating that it was his original intention to give the petitioner a light duty chit that would have placed him in a "no PFT" status (as opposed to "limited PFT" status). Of particular note is that the light duty chit plays no part in

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determining the petitioner's PFT status since it ended on 30 July 1998 and the petitioner did not take the PFT until 30 September 1998. By all indications from the documentation appended to reference (a), the petitioner was in a "full duty" status when he took the PFT; however, for some unknown reason he was only required to take a partial PFT.

c. The petitioner's contention that the Reporting Senior had no authority to direct a PFT is dispelled by the fact that the petitioner had just seen another medical officer the day prior to taking the PFT (enclosure (5) to reference (a)). In this statement, Lieutenant [REDACTED] states the petitioner made the choice to take the PFT knowing that he had a possible medical condition.

d. Notwithstanding the documentation furnished with reference (a), the Board concludes that the petitioner has failed to prove that the report is either factually inaccurate or unjust. Simply stated, the petitioner made a conscious decision to take the partial PFT. He failed and now wants to negate his decision.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps